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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE
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10 BOBBY COLBERT,

11 Petitioner,

12 v.

13 JASON BENNETT,

14 Respondent.

15 CASE NO. 2:24-cv-01002-DGE

16 ORDER ADOPTING REPORT AND
RECOMMENDATION

17 Before the Court is the Report and Recommendation (“R&R”) of United States
Magistrate Judge Theresa L. Fricke. (Dkt. No. 33.) Having reviewed the Report and
Recommendation and the remaining record *de novo*, and considered Petitioner’s objections, the
Court ADOPTS the R&R.

20 **I. FACTUAL AND PROCEDURAL BACKGROUND**

21 On July 29, 2024, Petitioner Bobby Darrell Colbert filed a petition for a writ of habeas
corpus pursuant to 28 U.S.C. § 2254, challenging his 2005 Skagit County convictions for rape in
the second and third degree. (Dkt. No. 8.) Petitioner challenges his convictions based upon the

1 alleged failure of the Skagit County prosecutor to disclose an exculpatory DNA report until
 2 February 1, 2019. (Dkt. No. 8 at 5.)

3 On February 20, 2025, Judge Fricke issued an R&R recommending the Court dismiss the
 4 petition, or, in the alternative, transfer the case to the Ninth Circuit. (Dkt. No. 33.) Judge Fricke
 5 found the petition was second or successive, and noted the Court did not have jurisdiction to
 6 consider this petition until after Petitioner applied for, and received, authorization from the Ninth
 7 Circuit to file a second or successive petition. (*Id.* at 8–13.) Judge Fricke also found the petition
 8 should be dismissed as time barred. (*Id.* at 14–16.) On February 25, 2025, Petitioner filed
 9 objections to the R&R. (Dkt. No. 35.)

10 On March 12, 2025, Petitioner filed an application with the Ninth Circuit for permission
 11 to file a second or successive habeas corpus petition. (Dkt. No. 36.) On April 29, 2025, the
 12 Ninth Circuit denied Petitioner’s application. (Dkt. No. 37.)

13 **II. LEGAL STANDARD**

14 A district court reviews *de novo* “those portions of the report or specified proposed
 15 findings or recommendations to which [an] objection is made.” 28 U.S.C. § 636(b)(1)(C); *see*
 16 *also* Fed. R. Civ. P. 72(b)(3) (“The district judge must determine *de novo* any part of the
 17 magistrate judge’s disposition that has been properly objected to.”).

18 **III. DISCUSSION**

19 Petitioner’s objections do not address Judge’s Fricke’s reasoning concerning whether his
 20 petition is second or successive.¹ Pursuant to 28 U.S.C. § 2244(b)(3)(A), a “second or
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22 ¹ Though not a model of clarity, Petitioner appears to argue that his Petition is not barred based
 23 on *Panetti v. Quarterman*, 551 U.S. 930, 947 (2007). (Dkt. No. 35 at 2.) *Panetti*, however,
 24 involved a claim of incompetency raised to prevent an execution; it is inapplicable to the present
 matter. *See* 551 at 947 (“The statutory bar on ‘second or successive’ applications does not apply
 to a *Ford* [(incompetency)] claim brought in an application filed when the claims is first ripe.”).

successive petition” may not be filed in the district court until the petitioner first obtains an order from the “appropriate court of appeals” that “authoriz[es] the district court to consider” the petition. *Brown v. Muniz*, 889 F.3d 661, 667 (9th Cir. 2018) (“If the petition is second or successive, then the district court lacks jurisdiction and must dismiss the petition unless and until the court of appeals grants an application to file it.”). Here, the Ninth Circuit has denied Petitioner’s application to file a second or successive petition and the Court lacks jurisdiction to consider the petition.

IV. ORDER

The Court, having reviewed the Report and Recommendation, the petition for writ of federal habeas corpus relief, objections to the Report and Recommendation, and the remaining record *de novo*, does hereby find and ORDER:

- 1) The Court ADOPTS the Report and Recommendation (Dkt. No. 33);
- 2) Petitioner's 28 U.S.C. § 2254 petition (Dkt. No. 8) is DISMISSED because the Court lacks jurisdiction.
- 3) Petitioner is DENIED issuance of a certificate of appealability.

Dated this 4th day of June, 2025.



David G. Estudillo
United States District Judge